

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

IVAN VON STAICH,

Petitioner,

v.

U.S. PAROLE COMMISSION,

Respondent.

Case No. 1:21-cv-00628-HBK

ORDER DENYING PETITIONER'S MOTION
FOR DEFAULT

(Doc. No. 10)

ORDER DIRECTING PETITIONER TO FILE
RESPONSE TO RESPONDENT'S MOTION
TO DISMISS

(Doc. No. 15)

FOURTEEN-DAY DEADLINE

Petitioner Ivan Von Staich initiated this action by filing a *pro se* petition for writ of mandamus under 28 U.S.C. § 1651. (Doc. No. 1). On April 16, 2021, the Court ordered Respondent to respond to the petition and directed the Clerk of Court to serve this order on the U.S. Attorney for the Eastern District of California and the U.S. Parole Commissioner. (Doc. No. 7). Inadvertently, neither of these entities were properly served. On July 26, 2021, in light of the fact that Respondent had not yet responded to the petition, Petitioner moved for default. (Doc. No. 10). On July 27, 2021, the Court served Respondent at the proper address. (*See* Doc. No. 12

1 at 2, 12-1 at 2-7). On August 2, 2021, Respondent moved for and was granted a 45-day extension
2 of time to respond to the petition, a Court order, and Petitioner's motion for default. (Doc. No.
3 12, 13). On September 16, 2021, Respondent timely responded to the petition, Court order, and
4 Petitioner's motion for default. (Doc. No. 15). Respondent seeks dismissal of the petition. (*Id.*).

5 Entry of default is appropriate as to any party against whom a judgment for affirmative
6 relief is sought that has failed to plead or otherwise defend as provided by the Federal Rules of
7 Civil Procedure and where that failure is shown by affidavit or otherwise. *See* Fed. R. Civ. P.
8 55(a). Here, Respondent was not initially properly served. After proper service, Respondent
9 responded in a timely manner. Therefore, Respondent has not failed to plead or otherwise defend
10 in this action. Accordingly, Petitioner's motion for default is denied. The Court will afford
11 Petitioner an opportunity to respond to Respondent's motion to dismiss the petition.

12 Accordingly, it is **ORDERED**:

13 1. Petitioner's motion for default (Doc. No. 10) is DENIED.

14 2. Petitioner may file a response, if any, to Respondent's motion to dismiss (Doc. No. 15)
15 within **fourteen (14) days** of receipt of this Order, after which time the Court will deem the
16 motion ripe for review.

17
18 Dated: September 29, 2021


HELENA M. BARCH-KUCHTA
UNITED STATES MAGISTRATE JUDGE